

March 18, 1998

USE OF 42 U.S.C. SECTIONS 209(g) AND 209(h) AND 42 C.F.R. PART 61B FOR APPOINTMENTS OF SCIENTISTS

NIH Manual Chapter 2300-320-2

1. Purpose. This instruction transmits the NIH policy on the use of 42 U.S.C. Sections 209(g) and 209(h) and 42 C.F.R. Part 61B for appointments of scientists. It extends the time limitation on initial appointments from 2 years to 5 years and permits extensions of appointments for up to 5 years rather than year-to-year.

2. Cancellation. Use of 42 U.S.C. Sections 209(g) and 209(h) and 42 C.F.R. Part 61B for appointments of scientists, dated January 22, 1998.

3. Coverage. This instruction covers experienced and talented scientists in both the NIH intramural and extramural programs as described in the attached policy.

4. Labor Relations Obligations. Implementation of this Instruction for employees represented by a labor organization is contingent upon completing labor relations obligations.

5. Effective Date. The provisions of this Instruction are effective upon signature.

/s/

Stephen C. Benowitz
Director of Human Resources

**USE OF 42 U.S.C. SECTIONS 209(g) AND 209(h),
AND 42 C.F.R. PART 61B FOR APPOINTMENTS OF SCIENTISTS**

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PROGRAM PROVISIONS	
PURPOSE AND SCOPE	<p>This instruction describes the policies and procedures for implementing the use of 42 U.S.C. Sections 209(g), 209(h), and 210(f), and 42 C.F.R. Part 61B for appointments of scientists at the NIH.</p> <p>This is a flexible mechanism to secure the services of experienced and talented scientists in both the NIH intramural and extramural programs for renewable appointments of defined duration for health-related research, studies, and investigations where the nature of the work or the character of the individual's services render customary employing methods impracticable or less effective: and (1) where a scientist would be reluctant to leave his or her current position due to NIH's inability to meet individual salary needs under other personnel systems; or (2) to recruit and retain scientists who do not meet the programmatic criteria of other personnel systems.</p> <p>These intramural and extramural appointees may perform line management and other administrative functions if the work is (1) directly related to the conduct of research studies or investigations or (2) indirectly related to research and require the scientific and research skills of the individual.</p>
REFERENCES	42 U.S.C. 209(g); 209(h); and 210(f) and Title 42 C.F.R., Part 61B, PHS Regulations
INTRAMURAL PROFESSIONAL DESIGNATION TITLES	Senior Investigator, Investigator, Staff Scientist, Staff Clinician.
INTRAMURAL OFFICIAL POSITION TITLES (SF-52)	Physician, Biologist, Epidemiologist, Mathematical Statistician, Dentist, etc.
EXTRAMURAL PROFESSIONAL DESIGNATION TITLES	Health Scientist Administrator, Scientific Review Administrator; Program Administrators, Program Officers, Project Officers, etc
EXTRAMURAL OFFICIAL POSITION TITLE (SF-52)	Health Scientist Administrator, Biologist, etc.

PROGRAM PROVISIONS	
ELIGIBILITY	<p>Appointees must be U.S. citizens, resident aliens, or nonresident aliens with a valid employment-authorized visa.</p> <p>Appointments may be offered to candidates who possess a Ph.D., M.D., D.D.S., D.M.D., D.V.M. or equivalent degree in a biomedical, behavioral, or related science or have been certified by a university as meeting all the requirements leading to such a doctorate. Degree requirements may be waived by the appropriate approving official in those rare cases in which training and experience are judged to equal the stature and achievement normally associated with the doctoral degree.</p> <p>At a minimum candidates must meet the qualification standards prescribed by the U.S. Office of Personnel Management for appointment to a position at the General Schedule 13 level or above.</p>
DURATION OF APPOINTMENTS	<p>Appointments are made initially for up to 5 years. Additional 1 to 5 -year extensions may be made by the appropriate review/approving official.</p> <p>Appointments may be terminated before their expiration date for cause: e.g., personal or scientific misconduct; lack of satisfactory performance; or for administrative reasons (in intramural programs, these conditions are specified in the appointment letter from the Institute to the appointee, in other programs, administrative reasons include but are not limited to programmatic changes, budgetary constraints, and lack of funds).</p>
EQUITY	<p>ICs are responsible for setting or recommending stipend amounts consistently so that employees occupying the same positions with equivalent or similar education, experience, and accomplishments are treated equitably within the relevant IC.</p>
STIPENDS	<p>Initial stipends shall be not less than the minimum rate payable for GS-13 of the General Schedule. Stipends shall be set only as high as is necessary to recruit or retain an outstanding scientist.</p> <p>Factors to be considered and addressed when ICs are determining and/or recommending initial stipends for appointees: (1) impact on the research, clinical, scientific field; (2) recognition within the scientific community; (3) specific research, clinical, scientific skills of benefit to NIH which exceed the basic requirements of the assignment; (4) scarce medical specialty; (5) Board Certification, if applicable; (6) current earnings and/or earnings and fringe benefits; and (6) written, competing, non-Federal offers of employment.</p>

PROGRAM PROVISIONS				
ANNUAL STIPEND INCREASES	Annual stipend increases may be approved by the designated approving official based on performance. Stipend increase recommendations should emphasize significant changes that have occurred since initial stipend was determined or the last pay adjustment occurred, and should include a justification of why the pay level recommended is appropriate. Stipend increases may be made effective following completion of 52 calendar weeks of service. Generally, stipend increases may not be awarded more often than once during each 52 calendar week period, but in unusual cases, exceptions may be requested in writing from the appropriate review/approving official.			
REVIEW AND APPROVING OFFICIALS ! Initial Stipend ! Recruitment Incentive ! Retention Incentive ! Annual Stipend Increases	Annualized Compensation * * Annualized compensation includes the annual stipend plus any incentive (e.g., recruitment/retention, PCA)	REVIEW/APPROVAL FOR:		
		NIH Extramural Programs Ph.D./M.D./D.D.S./D.V.M. (or equiv)	NIH Intramural Basic Research Ph.D./M.D./D.D.S./D.V.M. (or equiv)	NIH Intramural Clinical Research Ph.D./M.D./D.D.S./D.V.M. (or equiv)
	= >GS/GM-13/1 <= EX-IV (currently \$118,400)	IC Directors (may be redelegated to Scientific Directors or Directors of IC Extramural Programs if the redelegation is in writing) (See restrictions on intramural positions under “Appointment Procedures,” below)		
	> EX-IV <= EX-II (currently \$136,700)	DDER with review by DDM, OHRM, and subset of EPMC	DDIR with review by DDM, OHRM, and Ad Hoc Reviewers	MEC ADCR Clinical Policy Board DDIR
	> EX-II OR Increases > \$20,000 including initial stipend or salary adjustments	Director, NIH		
COMPARABILITY INCREASES	As approved by the Director, NIH			

PROGRAM PROVISIONS	
APPOINTMENT PROCEDURES	<p>All appointments to the NIH under this mechanism are subject to the same existing or future review and approval requirements for scientists in the Intramural and Extramural Research Programs.</p> <p>Offers of initial appointment and all subsequent extensions must be made to appointees in writing by IC Directors or designees and must include the beginning and termination dates. In addition, the selectee must be sent a letter of instructions on reporting for duty, taking a physical examination, if required, and submitting required EOD forms by IC Designated Program Official. (ICs should modify sample letters provided in NIH Manual Issuance 2300-320-1, NIH Staff Fellowship Program, dated 7/17/84.)</p>
REQUIRED DOCUMENTATION AND ROUTING PROCEDURES	<p>Requests to appoint individuals using this authority must be initiated by the requesting IC program official, reviewed through appropriate IC channels. The following documents are required:</p> <ul style="list-style-type: none"> (1) a memorandum of recommendation containing the following information: <ul style="list-style-type: none"> - a summary of the assignment and need for the services and the expected duration of the assignment; - a discussion of the qualifications of the proposed appointee - an explanation of the salary level requested - request for Fogarty International Center (FIC) assistance, if applicable (2) CV (3) bibliography. <p>If the appointee is new to the NIH, the following additional documentation is required:</p> <ul style="list-style-type: none"> (1) 2 letters of reference from non-collaborators (2) Copy of doctoral degree (s) -- if written in a foreign language it must be accompanied by a certified translation from the foreign language into English (3) Proof of U.S. permanent residence (if applicable) <p>Requests for appointments of all individuals engaged in intramural basic research requiring stipend approval outside of the IC should be forwarded to the Division of IC Consulting, OHRM for review and transmittal to the appropriate/review/approving official.</p> <p>Requests for appointments of all individuals engaged in intramural clinical research requiring stipend approval outside of the IC should be forwarded to the Executive Secretary of the Medical Executive Committee for review and transmittal to the Medical Executive Committee.</p> <p>Requests for appointments of all individuals engaged in extramural research requiring stipend approval outside of the IC should be forwarded to the Division of IC Consulting, OHRM for review and transmittal to the appropriate/review/approving official.</p>

PROGRAM PROVISIONS	
APPLICABILITY OF CIVIL SERVICE REGULATIONS	<p>Regulatory provisions in the following subject areas apply to the employment of individuals appointed under this authority on the same basis as Civil Service employees: Retirement (CSRS [if applicable], FERS and Social Security); Medicare, FEGLI, FEHB, Annual and Sick Leave, Training, Occupational Medical Service Facilities, Workers Compensation, Withholding Tax, Medical Qualifications, Standards of Conduct, Restrictions on Political Activity, Outside Work, Conflict of Interest, Tort Claims.</p> <p>To be eligible for participation in the retirement, life insurance, and health insurance programs, individuals must be appointed for a period of more than 1 year. Once appointees are enrolled in any of these programs, their eligibility continues into succeeding appointments or extensions -- even if for less than 1 year -- as long as there is no break in service of more than 3 days.</p> <p>Requirements for position descriptions do not apply. Instead, brief statements of major duties or projects are required at the time of recruitment and should be described in the memorandum requesting/recommending appointment.</p>
TRAVEL	<p>Appointees may be authorized travel and transportation (i.e., mileage allowance and per diem) to first duty station at the discretion of the IC. Coverage for appointees' immediate families and/or transportation of household effects may be authorized only as an exception by the appropriate review/approving official.</p> <p>Appointees are entitled to travel allowances or transportation and per diem while traveling on official business during the term of their appointments.</p> <p>Travel allowances or transportation from last duty station to place of residence are not authorized for appointees when they leave the Program.</p>
EVALUATION	<p>During the course of the appointments, supervisors should discuss and evaluate appointees' research-related achievements. Recommendations for stipend increases and/or extensions of appointments may be included in such discussions. At IC discretion, a written evaluation may be completed and provided to appointees.</p>